



On May 3, 2022, petitioner filed a status report stating that “petitioner acknowledges receipt of a covered and an uncovered vaccination and needs to differentiate vaccination through expert testimony,” and requested a sixty-day deadline to file an expert report. Pet. Status Report (ECF No. 28). The Court ordered petitioner to file the outstanding medical records and a supplemental statement of completion. Scheduling Order (Non-PDF, May 4, 2022).

On September 24, 2022, petitioner filed updated medical records and re-filed previously filed exhibits. Pet. Exs. 1-7. Petitioner filed a report from Dr. David Axelrod on October 27, 2022 to address vaccine causation. Pet. Ex. 8 (ECF No. 34).

On November 3, 2022, petitioner filed a motion for a decision dismissing the petition. Pet. Mot. Petitioner states, “An investigation of the facts and science supporting her case has demonstrated to petitioner that she will be unable to prove that she is entitled to compensation in the Vaccine Program.” Pet. Mot. at ¶ 1. Further, petitioner states that, “The primary issue was not whether vaccination generally could cause Sudden Sensorineural Hearing Loss, but which vaccination that petitioner received was the trigger. This is due to the fact that she received a covered vaccine (“influenza”) and an uncovered vaccine (shingles) on the same date.” *Id.* Petitioner states that “to proceed further would be unreasonable and would waste the resources of the Court, the Respondent, and the Vaccine Program.” *Id.* at ¶ 2. Petitioner understand that a decision by the Special Master dismissing her petition will result in a judgment against her and that she has been advised that such a judgment will end all of her rights in the Vaccine Program. *Id.* at ¶ 3. Further, petitioner understands that she may apply for attorneys’ fees and costs once her case is dismissed and judgment is entered against her. *Id.* at ¶ 4. Petitioner also understand that respondent reserves the right, pursuant to § 300aa-15(e), to question the good faith and reasonable basis of her claim and to oppose, if appropriate, her application for fees and costs. *Id.* Petitioner intends to protect her right to file a civil action in the future. *Id.* at ¶ 5.

To received compensation in the Vaccine Program, petitioners have the burden of proving either: (1) that the vaccinee suffered a “Table Injury,” i.e., an injury beginning within a specified period of time following receipt of a corresponding vaccine listed on the Vaccine Injury Table or (2) that the vaccinee suffered an injury that was caused-in-fact by a covered vaccine. §§13(a)(1)(A); 11(c)(1). In this case, petitioner was alleging an off-Table injury therefore must demonstrate that the covered vaccine she received caused her alleged vaccine-related injury. Petitioner filed an expert report from Dr. David Axelrod, who stated that petitioner developed “autoimmune sensorineural hearing loss,” and determined that either the covered flu vaccine or the uncovered Shingrix vaccine could have caused petitioner’s autoimmune condition. Pet. Exhibit (“Ex.”) 8. Further, petitioner stated in her motion that “there was no way medically or scientifically to demonstrate that the influenza (covered) vaccination was more likely than not the culprit” for petitioner’s alleged injury. Pet. Mot. at ¶ 1. As petitioner cannot received compensation on a claim based on a non-covered vaccine through the Vaccine Program, and the opinion of the medical expert does not support vaccine causation, this case must be dismissed. *See e.g. Cielencki v. Sec’y of Health & Human Servs.*, No. 15-632V, 2015 WL 10767150, at \*3 (Fed. Cl. Spec. Mstr. Dec. 22, 2015) (dismissing petition that involves Pneumovax).

Petitioner's motion for a decision dismissing her petition is **GRANTED** and the petition is hereby **DISMISSED. The Clerk of the Court shall enter judgment accordingly.**

**IT IS SO ORDERED.**

**s/Thomas L. Gowen**

Thomas L. Gowen

Special Master